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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RONALD LEE ALLEN,	Case No. 3:17-cv-00712-MMD-WGC
Petitioner,	ORDER
v.	
HAROLD WICKHAM, <i>et al.</i> ,	
Respondents.	

Petitioner has submitted an application to proceed *in forma pauperis* (ECF No. 1) and a petition for a writ of habeas corpus. The Court finds that petitioner is unable to pay the filing fee.

Petitioner has used the form for a petition under 28 U.S.C. § 2241. However, he is in custody pursuant to a judgment of conviction of a state court. Even though he is challenging how the Nevada Department of Corrections applies credits toward his sentence and is not challenging the validity of his judgment of conviction, 28 U.S.C. § 2254 governs this case. The Court will not require petitioner to file an amended petition on the correct form, but the parties will need to be aware how this action will proceed.

Petitioner has filed a motion for appointment of counsel. Whenever the Court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits

1 as well as the ability of the petitioner to articulate his claims pro se in light of the complexity
2 of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952 (9th Cir. 1983). There is
3 no constitutional right to counsel in federal habeas proceedings. *McCleskey v. Zant*, 499
4 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims
5 but are intrinsically enmeshed with them. *Weygandt*, 718 F.2d at 954. After reviewing the
6 petition, the Court finds that appointment of counsel in this action is not warranted.

7 It is therefore ordered that the application to proceed *in forma pauperis* (ECF No.
8 1) is granted. Petitioner need not pay the filing fee of five dollars (\$5.00).

9 It is further ordered that the Clerk of the Court file the petition for a writ of habeas
10 corpus and the motion for appointment of counsel.

11 It is further ordered that the Clerk add Adam Paul Laxalt, Attorney General for the
12 State of Nevada, as counsel for respondents.

13 It is further ordered that the Clerk electronically serve upon respondents a copy of
14 the petition and this order. In addition, the Clerk will return a copy of the petition to
15 petitioner.

16 It is further ordered that respondents will have forty-five (45) days from the date on
17 which the petition was served to answer or otherwise respond to the petition.
18 Respondents must raise all potential affirmative defenses in the initial responsive
19 pleading, including untimeliness, lack of exhaustion, and procedural default. Successive
20 motions to dismiss will not be entertained. If respondents file and serve an answer, then
21 they must comply with Rule 5 of the Rules Governing Section 2254 Cases in the United
22 States District Courts, and then petitioner will have forty-five (45) days from the date on
23 which the answer is served to file a reply. If respondents file a motion, then petitioner will
24 have fourteen (14) days to file a response to the motion, and respondents will have seven
25 (7) days from the date of filing of the response to file a reply.

26 It is further ordered that, notwithstanding Local Rule LR IC 2-2(g) paper copies of
27 any electronically filed exhibits need not be provided to chambers or to the staff attorney,
28 unless later directed by the Court.

1 It is further ordered that petitioner's motion for appointment of counsel is denied.
2 DATED THIS 24th day of May 2018.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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